

WASPA Member (SP)	eXactmobile
Information Provider (IP)	N/A
Service Type	Various Irregularities
Source of Complaint	Diane Page
Complaint Number	#4780
Code of Conduct Version	5.7
Date of Adjudication	20/09/2008

Complaint

The Complainant in this matter originally lodged the following complaint:

“I am getting content charges on my account. I have NEVER sent any MMS~S. There is a charge every single day and I want these deductions stopped immediately please. Thank you”

The SP responded by unsubscribing the Complainant and provided a log to provide proof of subscription.

The Complainant was however not satisfied and the complaint was escalated to formal status.

The Complainant offered the following reasons for escalation:

- Complainant attempted to stop the service twice, but it was rejected;
- She also received no monthly reminders in logs; and further alleged that
- She did not receive any of the information presented in the logs.

SP Response

The SP's response is here reproduced in full:

“The customer sent the keyword JOY to 32223 on the 22nd May 2008 at 23:04. This was in response to a TV ad. This is the SMS the user sent to join this service.

Inbound: SMS

2008-05-22 23:04:00 Joy MEGASUBSCRIPTIONS 32223

The subscriber was then sent the following 2 SMS:

2008-05-22 23:04:03 - Welcome to MEGA BIBLE! To access all the specials, go to www.exactmobile.mobi/mb (on WAP). See full MEGA TONES Terms & Conditions at www.exactmobile.co.za.

2008-05-22 23:04:03 - The MEGA BIBLE Club costs R4.99/day. To unsubscribe at any time, sms STOP MB to 32223 (R1/SMS). Customer Care Line: 0822 302 222 (VAS Rates/No free mins).

Reminder messages were sent as follows:

2008-06-23 08:05:24 - Dear user, youre a member of MEGA BIBLE. Cost R4.99/day. Help: 0822 302222 (VAS Rates/No free mins). Get new content at www.exactmobile.mobi/mb (on WAP).

2008-07-23 08:10:41 - Dear user, youre a member of MEGA BIBLE. Cost R4.99/day. Help: 0822 302222 (VAS Rates/No free mins). Get new content at www.exactmobile.mobi/mb (on WAP).

The subscription was cancelled on the 2nd Sept as follows:

The subscriber was sent an SMS on the 2 Sept 2008 at 10:02 as follows:

2008-09-02 10:02:03 - Dear user, your MEGA BIBLE access has now been cancelled. To reinstate it, please send JOY to 3 22 23 (cost: R4.99/day). More at www.exactmobile.mobi”

Sections of the Code considered

Without the Complainant specifying which sections of the Code were breached, the Adjudicator, after reviewing the Complaint, considered the following sections of version 5.7 of the Code of Conduct:

5.2.1. Any commercial message is considered unsolicited (and hence spam) unless:

- (a) the recipient has requested the message;
- (b) the message recipient has a direct and recent (within the last six months) prior commercial relationship with the message originator and would reasonably expect to receive marketing communications from the originator; or
- (c) the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

5.3.1. Members will not send or promote the sending of spam and will take reasonable measures to ensure that their facilities are not used by others for this purpose.

5.3.2. Members will provide a mechanism for dealing expeditiously with complaints about spam originating from their networks.

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as “subscription services”.

11.1.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be bundled with a request for a specific content item.

11.1.3. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

11.1.4. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

11.1.7. Once a customer has subscribed to a subscription service, a notification message must be sent to the customer containing the following information:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) Clear and concise instructions for unsubscribing from the service;
- (d) The service provider’s telephone number.

11.1.8. A monthly reminder SMS must be sent to all content subscription service customers containing the following information:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) The service provider's telephone number.

11.1.9. The monthly reminder SMS must adhere to the following format:

- (a) The monthly reminder must begin with either “Reminder: You are a member of NAME OF SERVICE” or “You are subscribed to NAME OF SERVICE”.
- (b) Any marketing for a new service must appear after the cost and frequency of the existing service and the service provider’s telephone number.

11.1.10. Once a customer has subscribed to a subscription service, neither the amount and frequency of the charges nor the frequency of the service may be increased without the customer’s explicit permission.

11.2. Termination of a service

11.2.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

11.2.2. All subscription services must have a readily available unsubscribe facility which costs no more than one rand.

11.2.3. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'.

11.2.4. Members must ensure that the termination mechanism is functional and accessible at all times.

11.1.4. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. In this specific matter it is difficult to ascertain whether the Complainant is giving a true reflection of events having reviewed the events log provided by the SP.

At the same time the Adjudicator is not alleging that the Complainant is making false allegations. Various factors can play a role which might indeed cause a user not to receive any information even though such information has been evidenced by logs. It is a case of contradictorily evidence.

In this matter the Complainant alleged that she tried to stop the service twice, but that it was rejected. The Code in section 11.2.4 states that members must ensure that the termination mechanism is functional and accessible at all times.

According to the Complainant this mechanism failed.

Sections 11.1.7 and 11.1.8 further indicates that a subscriber must receive an initial notification and a monthly reminder that he / she is indeed subscribed to a subscription service containing certain information as is reflected in the sections considered.

The Complainant denied receiving any such information although the SP in its response clearly reflected an events log that provides proof to the contrary.

The Adjudicator is of the opinion that there is not enough support to sustain all the allegations made by the Complainant and in its review of the SP's response

could not determine a finding that justifies any subsequent breach of the sections considered.

It is also the opinion of the Adjudicator that the SP did everything reasonably expected from a SP and conformed to its obligations under the Code with regards to this specific matter.

The Complaint is dismissed.

However, it would be unjust to leave the Complainant without any recourse and making an assumption that her account of the events was fictitious.

It is recommended that the SP provide the Complainant with a 50% refund of the total subscription costs related to this particular subscription. It should however be noted that this recommendation is not an enforcement but purely a recommendation.
